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S.B. v. Department of Children & Families

THE FINAL CASE ON THE COURT'S CALENDAR THIS MORNING IS SB VERSUS DEPARTMENT OF CHILDREN AND FAMILIES.

GOOD MORNING. MAY IT PLEASE THE COURT. GOOD MORNING. MY NAME IS CRAIG BOUDREAU. I AM AN ATTORNEY FROM WEST PALM BEACH. I REPRESENT SB, THE PATTEN IN THIS CASE. SB -- THE PETITIONER IN THIS CASE. SB IN THE ORIGINAL ACTION WAS THE MOTHER IN THE SUBJECT OF A DEPENDENCY PETITION. A DEPENDENCY PETITION ALLEGING THAT HER TWO DAUGHTERS WERE DEPENDENT. SHE DID NOT APPEAR AT THE ORIGINAL ARRAIGNMENT THAT WAS SCHEDULED BUT SENT IN A WRITTEN RESPONSE.

WHAT WAS THE BASIS OF THE DEPENDENCY ACTION? WAS THERE ANY ALLEGATIONS OF ANY KIND OF PHYSICAL OR SEXUAL ABUSE OR JUST WARPS THE ALLEGATIONS?

I -- OR JUST WHAT WERE THE ALLEGATIONS?

I BELIEVE THE ALLEGATIONS WERE NEGLECT, NEGLECTFUL, NOT SUPERVISING THE CHILDREN, THOSE TYPES OF ALLEGATIONS.

SO THE ONLY RIGHT TO COUNSEL THAT SHE WOULD HAVE IN THE DEPENDENCY PORTION WOULD BE STATUTORY.

AT LEAST IN THE EXISTING LAW THAT IS TRUE, THAT IT WOULD BE STATUTORY. HOWEVER, WE ASSERT THAT, BASED ON THE WAY THE DEPENDENCY PETITIONS ARE BEING HANDLED NOW AND THE, THAT THE FAILURE TO, YOU KNOW, TO COMPLY WITH A CASE PLAN IS RESULTING IN PETITIONS TO TERMINATE PARENTAL RIGHTS THAT, IT IS HARD TO GLEAN THAT, AT THE INITIAL STAGE WHEN AN APPOINTMENT IS MADE, OF COUNSEL, THAT YOU ARE NOT GOING TO END UP WITH THAT DEPENDENCY BECOMING A, THE FIRST LINK IN A CHAIN THAT LEADS TO THE TERMINATION OF PARENTAL RIGHTS.

NORMALLY HOW MUCH TIME IS GIVEN IN THESE? YOU GET A CASE. THE CHILD IS FOUND DEPENDENT. YOU GET A CASE PLAN THAT THE PARENT OR PARENTS ARE SUPPOSED TO WORK THROUGH, HOPEFULLY WITH THE GOAL OF REUNIFICATION.

RIGHT.

HOW MUCH TIME, ISN'T THERE, LIKE, A YEAR PERIOD OR SOMETHING NORMALLY GIVEN, FOR THE PARENTS TO WORK OUT THESE CASE PLANS?

NORMALLY, I BELIEVE THE STATUTE SAYS TWELVE MONTHS.

SO THAT MEANS THAT YOU DO THESE CASE PLANS AND THEN YOU DON'T END UP WITH THAT NEXT STEP, CORRECT?

WELL, THAT'S CORRECT, BUT IF FOR SOME REASON, YOU FAIL TO PERFORM UNDER THE CASE PLAN OR AT LEAST THE STATE ALLEGES THAT YOU FAILED TO PERFORM UNDER THE CASE PLAN, THEN YOU ARE FACING TERMINATION OF PARENTAL RIGHTS.

YOU KNOW WHAT PERCENTAGE OF DEPENDENCY PROCEEDINGS END UP IN TERMINATION OF

PARENTAL RIGHTS PROCEEDINGS?

NO, I DO NOT. HOWEVER, I NOTED THAT, IN THE ANSWER BRIEF, COUNSEL FOR THE DEPARTMENT CANDIDLY ADMITTED THAT THE MAJORITY OF THE TERMINATION CASES EMANATE FROM DEPENDENCY CASE PLAN FAILURES.

RIGHT BUT THAT DOESN'T MEAN THAT THE MAJORITY OF DEPENDENCY END UP IN TERMINATION.

NO.

SO WHAT I AM ASKING, DO YOU KNOW WHAT THAT STATISTIC IS, BECAUSE IT COULD BE VERY LARGE. IT COULD BE VERY SMALL.

I DO NOT KNOW THAT STATISTIC.

OKAY, NOW, THE BASIS UPON WHICH THERE WOULD BE A TERMINATION BY THE COURT AS TO THE INEFFECTIVE ASSISTANCE OF DEPENDENCY COUNSEL, WOULD BE UNDER THE DUE PROCESS PROVISION OF THE STATE CONSTITUTION?

YES.

OKAY. NOW, WOULD THERE BE A RIGHT, THERE, TO HAVE COUNSEL, TO, IN SORT OF THE POSTCONVICTION PHASE OF THIS?

I WAS THINKING ABOUT THAT ISSUE THIS MORNING, ALTHOUGH THAT IS NOT THE ISSUE TODAY. CERTAINLY SIMILAR TO THE CRIMINAL SYSTEM, THE COURT WOULD HAVE, AT LEAST HAVE THE DISCRETION TO APPOINT COUNSEL, AS THEY WOULD IF THEY WERE GRANTING AN EVIDENTIARY HEARING IN A POSTCONVICTION MOTION.

I AM A LITTLE, YOU KNOW, I CERTAINLY WANT CHILDREN AND PARENTS TO BE APPROPRIATELY REPRESENTED, AND SO WHEN YOU SAY WHETHER THE COURT IS SAYING A LAWYER WHO IS BEING APPOINTED PERFORM COMPETENTLY, YOU WOULD SAY OF COURSE THEY SHOULD PERFORM COMPETENTLY. ON THE OTHER HAND, THE CONCEPT THAT WE WOULD HAVE A, THAT IF THERE WAS A CLAIM TO BE RAISED, THAT IT WOULD, IN FACT, HAVE TO BE RAISED BEFORE THE TERMINATION OF PARENTAL RIGHTS, THAT, HOW DO YOU, JUST, HOW WOULD YOU ENVISION THIS ACTUALLY OPERATING, AND WOULD THERE BE ANY FILTER? IN OTHER WORDS SHOULD THERE BE A DIFFERENCE BETWEEN SAYING COUNSEL, AGAIN, JUST DIDN'T SHOW UP, SO THAT THIS, SO THAT THE PERSON DIDN'T EVEN GET TO THE HEARING OR COUNSEL TOLD THE CLIENT THE WRONG DATE. OR THERE WAS THE KEY WITNESS THAT WOULD HAVE 100 PERCENT REFUTED IT. I MEAN, IS THERE ANY FILTERING OR IS IT JUST THERE IS JUST A GENERAL RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL AND THEN YOU WOULD JUST START ON THAT PROCEEDING, AND YOU WOULD HAVE TO START ON THAT PROCEEDING ABOVE YOU GOT THE TERMINATION OF PARENTAL RIGHTS?

WELL, I SUGGESTED IN MY BRIEF THAT THE CRIMINAL STANDARD, THE STRICKLAND STANDARD BE APPLIED, BECAUSE IT IS, BOTH, REMITS TO THE LEVEL OF PERFORMANCE OF COUNSEL AND IT TIES IT INTO THE FACTS OF THE CASE THAT IT ACTUALLY HAS RESULTS THAT THERE IS A REASONABLE PROBABILITY THAT IT WOULD HAVE AFFECTED THE OUTCOME.

BUT YOU HAVE TO WAIT UNTIL THE DEPENDENCE. WHEN WOULD YOU START IT?

OKAY. I WOULD PROPOSE THAT IT BE STARTED. IT COULD BE DONE CONCURRENTLY WITH ANY DIRECT AFTERNOON EEL, BECAUSE -- APPEAL, BECAUSE IN DEPENDENCY CASES THERE IS AN ADVANTAGE. THEY ARE NONJURY CASES. THE TRIAL JUDGE IS IMMEDIATELY INTIMATELY FAMILIAR WITH THE FACTS OF THE CASE, SO IT WOULD MAKE SENSE THAT, AT THE TIME OF AN ADJUDICATION OF DEPENDENCY, IT THAT THE ORDER ITSELF, AS WE DO WHEN WE DENY MOTIONS

FOR, TO VACATE AN ILLEGAL SENTENCE, THAT THE ORDER SPECIFICALLY PROVIDE A TIME PERIOD FOR THE PARENT TO ALLEGE ANY INEFFECTIVE ASSISTANCE OF COUNSEL.

SO WHILE THE LAWYER WHO IS REPRESENTING THE PARENT IS APPEALING THE CASE, THEN THE PARENT IS SIMULTANEOUSLY IN THE TRIAL COURT, SAYING THAT LAWYER WAS INCOMPETENT.

WELL, IF IT IS THE SAME LAWYER THAT IS DOING THE APPEAL, BUT NEVERTHELESS, THAT WOULD MAKE THE MOST SENSE, BECAUSE IT WOULD, BOTH, IT WOULD, BOTH, ASSURE THAT THE CHILDREN ARE BEING MOVED ALONG ON THE PROPER PATH TO WHATEVER PLACEMENT OR ADOPTION IS GOING TO TAKE PLACE, WITHOUT INTERFERING WITH IT, AND IT WOULD, ADDITIONALLY ASSURE THAT, IF WE DID HAVE THAT MISTAKE BY COUNSEL, THAT THE FAILURE TO CALL THE WITNESS, THAT WOULD HAVE WON THE CASE, THEN YOU WOULD AVOID THAT PROBLEM, AND WE WOULD MEET THE STATUTORY GOAL THAT THE CHILDREN MAINTAIN THEIR FAMILIAL RELATIONSHIP.

ARE YOU TELLING ME THAT, IF A KEY WITNESS THAT WOULD HAVE REALLY SHOWN THAT THE CHILD WAS NOT AT ALL IN NEED OF BEING DECLARED DEPENDENT, THAT YOU PRESENTED THAT TO DCF, THAT THEY ARE JUST GOING TO, IT IS GOING TO BE IGNORED OR THAT YOU COULDN'T, IN THAT SITUATION, WHILE THE APPEAL IS STILL GOING ON, BE ABLE TO PETITION THE COURT FOR, BASED ON NEWLY-DISCOVERED EVIDENCE, AND THAT THERE IS NO OTHER REMEDY OTHER THAN TO START ATTACKING COUNSEL FOR AND DECIDING WHETHER THESE WERE STRATEGIC DECISIONS OR NOT?

WELL, THAT, IT SOUNDS LIKE A DISTINCT ISSUE FROM THE ISSUE OF WHETHER COUNSEL WAS DEFICIENT. THE ISSUE OF WHETHER THERE MIGHT HAVE BEEN, FOR EXAMPLE, NEWLY-DISCOVERED EVIDENCE OR SOMETHING ELSE THAT MIGHT FALL UNDER SIMILAR TO A CIVIL RULE 1.540 MOTION. THAT WOULD BE THAT, IS DISTINCT FROM THIS SITUATION, WHERE THE FACTS IN THIS CASE IS THAT THE MOTHER HERE IS SAYING MY LAWYER, YOU KNOW, DIDN'T DO ANYTHING FOR ME.

NOW, WE ALREADY APPOINT COUNSEL FOR THE DEPENDENCY, IF THE PARENT IS INDIGENT AND DOES NOT WAIVE COUNSEL, CORRECT?

THAT'S CORRECT.

AND THEN YOU SAID A FEW MINUTES AGO, THAT THAT ATTORNEY MAY OR MAY NOT BE THE ATTORNEY WHO WOULD HANDLE ANY APPEAL FROM A DETERMINATION OF DEPENDENCY, SO DO WE, THEN, IF THAT ATTORNEY IS NOT THE PERSON, DO WE THEN HAVE TO APPOINT AN ATTORNEY TO DO THE APPEAL, ALSO?

WELL, I DON'T KNOW --

WE, MEANING THE COURT?

AND I AM SURE EVERY CIRCUIT IS DOING IT DIFFERENTLY, IN TERMS OF WHO THEY ARE APPOINTING TO DO THE APPEALS, VERSUS WHO THEY ARE APPOINTING TO HANDLE THE ACTUAL TRIALS OF THESE CASES. FOR EXAMPLE IN PALM BEACH COUNTY THEY HAVE CONFLICT TEAMS, AND THERE HIS LAWYERS THAT ARE ON THESE CONFLICT TEAMS THAT HANDLE THE CASES, MEMBERS OF THE PRIVATE PARTY THAT HANDLE THOSE CASES. HOWEVER, I WAS APPOINTED TO HANDLE THIS APPEAL, AND I AM NOT SURE EXACTLY, AND I AM NOT ON THE CONFLICTING --

SO PALM BEACH COUNTY, WOULD THE SAME LAWYER WHO REPRESENTED THE PARENTS AT THE DEPENDENCY PROCEEDING, DO THE APPEAL?

I AM NOT SURE WHETHER THEY ARE DOING. THAT I DON'T BELIEVE THEY ARE.

SO THEORETICALLY, WE COULD BE APPOINTING, THE COURT WOULD BE APPOINTING COUNSEL FOR THE DEPENDENCY, COUNSEL FOR THE APPEAL, AND THEN --

RIGHT.

-- COUNSEL FOR ANY POSSIBLE POSTCONVICTION.

AND IF WE WERE TO DO SIMULTANEOUS ACTIONS, WHERE WE WERE ALLOWING THE PARENT TO PURSUE AN IN EFFECT OF ASSISTANCE OF -- AN INEFFECTIVE ASSISTANCE OF COUNSEL CLAIM WHILE THE APPEAL WAS ON, THEN OBVIOUSLY IT WOULD MAKE SENSE TO APPOINT A DIFFERENT COUNSEL, FOR PURPOSE OF HANDLING THE DIRECT APPEAL, JUST SO THERE WEREN'T ANY, YOU KNOW, OBVIOUS CONFLICTS OF INTEREST.

HAVE YOU EXPLORED OTHER METHODS? I MEAN THIS POSTCONVICTION CONCEPT WHICH WE HAVE STRUGGLED WITH EVERY TIME WE HAVE ORAL ARGUMENT IN THE CAPITOL AREA -- IN THE CAPITAL AREA, IS SOMETHING THAT GOES AND ON AND ON, WHICH IS A REAL PROBLEM IN DEPENDENCY CASES, BUT IF YOU EXPLORED OTHER ADMINISTRATIVE PROCEDURES OR ADMINISTRATIVE REVIEW OF COUNSEL IN THESE CASES, TO DO THIS IN SOME OTHER WAY THAN KEEPING THE LITIGATION GOING, THAT CAN SERVE TO TRY TO GET THE BEST COUNSEL THAT CAN BE PROVIDED, BUT THAT IS NOT GOING TO IMPACT THIS PROCESS THIS WAY.

WELL, OF COURSE, THE TRIAL JUDGE, BEING THE TRIER OF FACT, UNLIKE THE CRIMINAL PROCESS, WHERE IT IS ALMOST ALWAYS THE JURY, THE TRIAL JUDGE HAS THE ABILITY TO IMMEDIATELY PLUG IN THE NEW ALLEGATION INTO THE SET OF FACTS THAT IS IN THAT TRIAL JUDGE'S MIND, IN MAKING THAT FACTUAL DETERMINATION, AND DETERMINE WHETHER OR NOT THAT IS SOMETHING THAT WOULD HAVE AFFECTED THE VERDICT.

YOU KNOW, I THINK THAT IS SOMEWHAT WHAT BOTHERS ME ABOUT THIS WHOLE PROCESS, IS THAT I AM GRAY ENOUGH IN THE HEAD TO REMEMBER WHEN THE JUVENILE COURTS WERE NOT EVEN PART OF THE CIRCUIT COURTS. THEY HANDLED DEPENDENCY MATTERS, AND IT WAS UNDER A CONCEPT THAT THIS WAS NOT AN ADVERSARIAL PROCESS. THIS WAS SOMETHING THAT WAS DONE BY THE COURT, IN A METHOD BY WHICH IT WAS GOING TO BE IN THE BEST INTERESTS OF THE CHILD. NOW WE ARE LAWYERING THIS PROCESS IN SUCH A WAY, THAT IT IS NOTHING BUT AN ADVERSARIAL PROCESS. AND THAT, I MEAN, NOW, AREN'T YOU ADDING ANOTHER LAWYER OF ADVOCACY?

I DON'T KNOW HOW YOU CAN AVOID ADVOCACY IN A SITUATION WHERE, WHERE A PARENT IS HAVING THEIR CHILD REMOVED FROM THEIR HOME OR HAVING THEIR PARENTAL RIGHTS EFFECTIVELY ULTIMATELY TERMINATED.

BUT IN A DEPENDENCY, WHAT WE HAVE GOT TO ASSURE, WE ARE TALKING ABOUT DUE PROS, NOT A SIXTH AMENDMENT RIGHT TO COUNSEL.

CORRECT.

IS THAT THE PARENT HAS A MEANINGFUL OPPORTUNITY TO BE HEARD LOOKING AT THIS -- TO BE HEARD, AND WE HAVE GOT THE TRIAL, SHE EVADED SERVICE, SHE REFUSED TO COOPERATE WITH THE DEPARTMENT TO PLEAD HER CASE PLAN, FAILED TO SUPPLY REQUESTED PAPERS AND FAILED TO APPEAR, WHAT I AM HEARING IS THAT SHE SHOULD HAVE THE RIGHT, BECAUSE SHE CLAIMS HER COUNSEL WAS INEFFECTIVE, TO NOW GO BACK IN WHILE HER APPEAL IS PENDING AND START OVER AGAIN T SEEMS WORSE THAN A CRIMINAL SITUATION, BECAUSE THAT WOULD BE, NOW WE WOULD BE MANDATING ANOTHER HEARING FOR THE TRIAL JUDGE TO HAVE ON THE THRESHOLD ISSUE. THERE WOULD BE NO FINALITY.

WELL, WE WOULD SUBMIT THAT THE FOURTH DISTRICT'S OPINION, IN THE RECITATION OF THOSE DETAILS, WAS REALLY BASED ON PLEADINGS THAT WERE NOT ADJUDICATED, IN TERMS OF THERE WAS NEVER ANY HEARING ON THE CONFLICT BETWEEN MY CLIENT AND HER SAYING HER LAWYER NEVER EVER PURSUED SETTING ASIDE THE JUDGMENT OVER HER NOT APPEARING AT THE ARRAIGNMENT BUT FILING A WRITTEN RESPONSE.

WHAT IS THE STATUS OF DB NOW?

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YOU ARE IN YOUR REBUTTAL.

WHAT IS THE STATUS OF THIS? HAS THIS HELD UP ANYTHING?

WHAT HAS HAPPENED NOW IS THE TRIAL IS -- THE CHILD IS IN THE CUSTODY OF THE FATHER, UNDER THE FAMILY LAW CASE. IT IS ACTUALLY OUTSIDE OF THE --

DIDN'T THAT HAPPEN IN THIS PROCEEDING, BEFORE THESE MOTIONS WERE FILED? AND THEN THE MOTHER HERE KIND OF WEIGHTED TWO YEARS, ALMOST TWO YEARS AFTER THE CHILDREN, ACTUALLY BOTH OF THEM WERE GIVEN TO THE FATHER OF ONE OF THEM, CORRECT?

THAT'S CORRECT. AND YES, IT DID HAPPEN AFTER THE FACT, IN ALL CANDOR. IT HAPPENED AFTER THE FACT, AND THIS CASE IS NOT PROCEDURALLY THE MOST GRACEFUL OF CASES, BUT THERE IS CLEARLY A CONFLICT BETWEEN THE TWO DISTRICTS' OPINIONS.

THANK YOU, COUNSEL.

GOOD MORNING, YOUR HONORS. MAY IT PLEASE THE COURT. MY NAME IS JEFFREY DANA GILLEN. I AM AN ATTORNEY FOR THE DEPARTMENT OF CHILDREN AND FAMILIES. IF I COULD QUICKLY GO RIGHT TO WHAT JUSTICE PARIENTE WAS ASKING. ITS DOES SEEM, TO THE DEPARTMENT, THAT THE, THIS IS NOT THE RIGHT CASE FOR THE, THIS COURT TO BE HANDLING THIS ISSUE.

BUT DON'T WE HAVE THE FIRST DISTRICT'S CASE, WHICH ACTUALLY HAS MUCH, A LOT OF ALLEGATIONS AND HAS DEPENDENCY WITH ALLEGATIONS OF SEXUAL ABUSE.

CORRECT.

THAT THIS IS IN CONFLICT WITH, IN ANY EVENT, AND SO WE HAVE GOT TO GET TO THE ISSUE OF, IN ANY CIRCUMSTANCE, IN A DEPENDENCY CONTEXT, IS THERE A RIGHT.

I UNDERSTAND. WELL, THE CONFLICT, HOWEVER, IS, IS IN THE, WHAT I WOULD SUGGEST TO THESE, TO YOUR HONORS, IS THE DICTA WITHIN THE FOURTH DCA'S OPINION. JUDGE STONE MADE IT VERY CLEAR AND WENT TO GREAT LENGTHS TO DISTINGUISH THE FACTS AND THE PROCEDURE.

ISN'T THAT OTHER CASE, THERE WERE CERTIFIED QUESTIONS.

THERE WERE IN LW.

LW.

YES, THAT'S CORRECT.

SO IS THAT NOT BEFORE US ALSO?

NOT TO MY KNOWLEDGE.

SO THE DEPARTMENT IS BASICALLY FINE WITH THE FIRST DISTRICT'S CASE IN LW, WHICH FINDS A RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL?

JUSTICE, NO, WE ARE NOT HAPPY WITH THE DECISION IN LW. WE THINK THE DECISION IN SB WAS THE CORRECT DECISION. MOVING --

SB, ACTUALLY, DOESN'T THE FOURTH DISTRICT ACTUALLY SAY, BEYOND THE FACTS OF SB, THAT YOU HAVE NO INEFFECTIVE ASSISTANCE, WHETHER THE RIGHT IS, RIGHT TO COUNSEL IS CONSTITUTIONAL OR STATUTORY.

ABSOLUTELY.

SO ARE YOU HAPPY WITH THAT STATEMENT?

YES.

BECAUSE I THOUGHT THE ARGUMENT HAD BEEN IN LW, THAT IF IT WAS CONSTITUTIONAL, IF THE RIGHT TO COUNSEL WAS CONSTITUTIONAL IN NATURE, THEN YOU WOULD HAVE A RIGHT TO EFFECTIVE ASSISTANCE.

IN INEXPLICABLY, AS I NOTED IN OUR BRIEF ON THE MERITS IN THIS CASE, IN INEXPLICABLY, COUNSEL FOR THE DEPARTMENT, IN THAT LW CASE, DID CONCEDE THAT THAT POINT WOULD BE, I BELIEVE THEY USED THE TERM, WELL TAKEN. THE POSITION OF THE DEPARTMENT, WITH RESPECT TO THIS ISSUE, HOWEVER, IS THAT THE RIGHT TO COUNSEL IN DEPENDENCY MATTERS THAT DON'T INVOLVE TERMINATION OF PARENTAL RIGHTS, AND THERE IS, OF COURSE, A VERY SERIOUS AND FUNDAMENTAL DISTINCTION THERE, THAT DON'T INVOLVE PARENTS IN DEPENDENCY CASES, FOR THE ABUSE OR NEGLECT OF THEIR CHILDREN, THAT RIGHT TO COUNSEL IS STATUTORY ONLY.

BUT IF IT IS, IN FACT, IF IT WERE, IN FACT, A TERMINATION PROCEEDING OR ONE WHERE CRIMINAL CHARGES WERE PENDING, YOU WOULD HAVE A CONSTITUTIONAL RIGHT, UNDER DW.

ABSOLUTELY UNDER DB. YES, MA'AM.

AND THEN WOULD YOU HAVE A RIGHT TO EFFECTIVE COUNSEL?

NO, YOUR HONOR. THE CASES THAT I HAVE READ ON, THIS AND BELIEVE ME, I HAVE READ A LOT OF THEM NOW, FROM ALL OVER THE UNITED STATES, MAKE IT CLEAR THAT THAT IS AN ISSUE THAT ALL OF THE APPELLATE LEVEL, INTERMEDIATE LEVEL, FOR THE MOST PART, APPELLATE LEVEL COURTS, ARE STRUGGLING WITH. THE TWO MORE RECENT CASES THAT WERE REFERRED TO IN LW AND THAT I HAVE READ, ARE FROM OUT OF TEXAS, 2002 DECISION IN WHICH A SPEAKER IMMEDIATE LEVEL APPELLATE COURT SAYS THE RIGHT TO COUNSEL, IN A TERMINATION OF PARENTAL RIGHTS PROCEEDING, IS NOT, DOES NOT COME WITH THE RIGHT TO EXPECT EFFECTIVE COUNSEL. SIMILARLY NEBRASKA RULED THE SAME WAY. THE TEXAS CASE IS CITED IN THE BRIEF. I DON'T BELIEVE THAT THE NEBRASKA CASE IS, BUT IT IS REFERRED TO IN THE LW. THAT CASE IS THE AZILA B CASE.

HAVE ANY CASES MADE A DISTINCTION IN THE SIXTH AMENDMENT CONTEXT, I DON'T KNOW IF YOU ARE FAMILIAR WITH A CASE CALLED CHRONIC. THERE ARE CASES WHERE COUNSEL IS EFFECTIVELY NOT PERFORMING AS COUNSEL. YOU KNOW, THEY DON'T SHOW UP. THEY MISS A DEADLINE. THEY, NOT JUDGMENT CALL KINDS OF THINGS, LIKE THIS LAUNDRY LIST THAT IS IN LW.

RIGHT.

OF SECOND-GUESSING WHAT THE LAWYER DID, WHICH WE SEE IN THE CRIMINAL CONTEXT, BUT --

EXACTLY.

-- WHAT WE WOULD CONSIDER TO BE, YOU KNOW, NO BRAINERS, ABOUT THE LAWYER JUST NOT, YOU KNOW, NOT DOING ANYTHING. NOW, HOW, HAVE ANY COURT DEALT WITH, BECAUSE, AGAIN, IF YOU COME OUT WITH A DECISION TO SAY YOU KNOW, IF YOU GIVE COUNSEL, WE DON'T CARE IF THEY ARE EFFECTIVE OR NOT, IT SOUNDS LIKE YOU ARE BEING, THAT IS RIDICULOUS. I MEAN, THERE HAS GOT TO BE CASES THAT TALK ABOUT THERE IS SOME THRESHOLD THAT, WHERE THE PERSON'S DUE PROCESS RIGHT HAS NOW BEEN COMPROMISED BECAUSE THE LAWYER DID NOTHING, THAT YOU NOW HAVE A DIFFERENT SITUATION. IS THERE ANY WAY TO DRAW THAT LINE AND ANY COURT THAT HAS DONE THAT?

WELL, TO MY KNOWLEDGE, TO ANSWER THE QUESTION QUICKLY, NO, I AM NOT FAMILIAR WITH ANY SUCH CASE. HOWEVER, THE QUESTION ESSENTIALLY PRESUMES THAT THERE IS A DUE PROCESS RIGHT TO COUNSEL IN DEPENDENCY --

YOU HAVE GOT A DUE PROCESS RIGHT TO BE HEARD.

JUSTICE LEWIS HAD A QUESTION.

YES. MY CONCERN IS THAT WE GET INVOLVED WITH ADDRESSING THE PROCESS AND IGNORING THE SUBSTANCE OF WHAT WE ARE REALLY TALKING "B" BECAUSE I DON'T BELIEVE YOU ARE GOING TO REALLY STAND THERE IN FRONT OF US AND SAY THAT LAWYERS SHOULD NOT BE COMPETENT AND EFFECTIVE, NO MATTER WHERE THEY ARE, BUT WHEN WE GET INTO THE PROS HE OF APPLYING IT AND IT STRINGS THIS THING OUT AND IT TAKES ITS TOLL ON LIVES, IS THERE SOME OTHER PROCESS, OTHER THAN THIS POSTCONVICTION MODEL THAT COUNSEL SUGGESTS, THAT CAN BE IMPLEMENTED, AS A PRACTICAL MATTER, TO ASSURE THAT ATTORNEYS ARE NOT JUST THERE GRABBING A FEE, AND WHETHER THAT LINE BE A CHRONIC LINE OR BE SOME OTHER LINE, IS THERE SOME PROCESS THAT CAN BE IMPLEMENTED TO DO THAT?

LET ME ANSWER THAT QUESTION BUT QUICKLY, FIRST, ADDRESS JUSTICE CANTERO'S QUESTION CONCERNING PERCENTAGES, BECAUSE I THINK IT DOES APPLY TO YOUR QUESTION, JUSTICE LEWIS. JUSTICE CANTERO ASKED ESSENTIALLY WHAT IS THE PERCENTAGE OF CASES, DEPENDENCY CASES, THAT RESULT IN TERMINATION OF PARENTAL RIGHTS. I HAVE NOT DONE, HAD AN OPPORTUNITY TO DO ANY KIND OF ANALYSIS OR STATISTICAL ANALYSIS OF THIS, BUT MY CONSIDERED GUESS, AND IT IS BASED ON A GREAT DEAL OF EXPERIENCE, WOULD BE AROUND 20 PERCENT, 20 PERCENT OR LESS OF DEPENDENCY CASES ULTIMATELY RESULT IN TERMINATION OF PARENTAL RIGHTS CASES. NOW, TO GET TO JUSTICE LEWIS'S QUESTION MORE SPECIFICALLY, ON THE ASSUMPTION, JUSTICE LEWIS, THAT THIS COURT FINDS THAT THERE IS A RIGHT TO EFFECTIVE COUNSEL IN THESE CASES, IN THESE DEPENDENCY CASES, AND I AM NOT CONCEDED THAT --

BUT WE ALSO HAVE A TERMINATION INVOLVED HERE, TOO, DO WE NOT?

NO. THESE TWO CHILDREN, BY THE WAY, TWO IN THIS CASE, AND THEY ARE PLACED NOW WITH THEIR RESPECTIVE FATHERS.

SO WE DO HAVE A TWIST --.

ABSOLUTELY. ABSOLUTELY. YES.

COULD YOU ADDRESS --

YES.

-- AS FAR AS SOME PROCESS, IS IT CONCEIVABLE SOMEHOW WITHIN THIS SYSTEM THAT WE HAVE

HUMANLY CREATED, SO THAT BECOMES AN EFFECTIVE METHOD OF PROTECTING EVERYONE'S RIGHTS?

CONCEPTUALLY, AGAIN, FOR SAKE OF ARGUMENT OR DISCUSSION, IF THE COURT DETERMINES THAT A RIGHT DOES EXIST, IT SEEMS TO THE DEPARTMENT, THAT THE, THAT A POTENTIALLY WORKABLE PROCEDURE MIGHT BE SOMETHING LIKE THIS. IF THE PARENT OR LEGAL CUSTODIAN INVOLVED IN THE DEPENDENCY PROCEEDING, RAISES THE ISSUE AT OR BEFORE ADJUDICATION OR AT OR BEFORE DISPOSITION, THAT CAN BE ADDRESSED BY THE TRIAL JUDGE. IF THE PARENT OR LEGAL CUSTODIAN FAILS TO RAISE THAT ISSUE AT OR BEFORE ADJUDICATION OR AT OR BEFORE DISPOSITION, THEN IT IS WAIVED FOR APPEAL PURPOSES.

I THINK THAT WHAT I AM ASKING, I HAVE A HARD TIME WITH IS I THINK WE TEND TO ADDRESS THIS IN TERMS OF A RIGHT, WHICH, IN THE PARLANCE OF THE WALLS OF THIS COURT, EITHER MEAN YOU HAVE GOT A CONSTITUTIONAL RIGHT OR STATUTORY RIGHT OR THE COMMON LAW IS GIVING YOU A RIGHT, WHEREAS WHAT I AM GETTING AT, AND I SORT OF HEAR JUSTICE LEWIS GETTING AT, IS THAT THERE IS A REASONABLE EXPECTANCY, ON THE PART OF PEOPLE THAT ARE IN THE SYSTEM, THAT THE LAWYERS THAT ARE GOING TO BE THERE, ARE GOING TO ACT IN A COMPETENT AND IN AN EFFECTIVE WAY, AND RATHER, I MEAN, WHO, HOW IS THAT GOING, THAT REASONABLE EXPECTANCY GOING TO BE ADMINISTERED?

I UNDERSTAND THE QUESTION.

ADMINISTERED BY THE DEPARTMENT, AS ADMINISTERED BY THE TRIAL JUDGE?

NO. IN ESSENCE IT WOULD BE ADMINISTERED BY THE TRIAL JUDGE, BECAUSE REMEMBER, AS COUNSEL POINTED OUT, ALL OF OUR CASES, ALL OF OUR DEPENDENCY CASES THAT GO TO ADJUDICATORY HEARING, AND FRANKLY FROM BEGINNING TO END, ARE HANDLED BY, FOR THE MOST PART, A SINGLE DEPENDENCY JUDGE, A SINGLE JUVENILE JUDGE WHO HANDLES, AT LEAST IN THE PALM BEACH COUNTY, DEPENDENCY AND DELINQUENCY MATTERS, AND I THINK THAT IS ESSENTIALLY TRUE THROUGHOUT THE STATE FORM IN THESE CASES THAT DO GO TO -- THROUGHOUT THE STATE. IN THESE CASES THAT DO GO TO ADJUDICATORY HEARING, MOST PEOPLE CALL TRIALS, IS A UNIQUE SITUATION, IN THAT THE JUDGE IS NOT, THE JUDGE IS NOT AN ARBITER, AS THE JUDGE MIGHT BE IN A CRIMINAL PROCEEDING. THE JUDGE TAKES AN ACTIVE ROLE IN THESE PROCEEDINGS. THE JUDGE MAKES SURE THAT EVERYBODY HAS A RIGHT TO BE HEARD. THE JUDGE MAKES SURE THAT THE CHILDREN'S BEST INTERESTS ARE BEING SERVED. THE CHILDREN ARE APPOINTED GUARDIANS AD LITEM.

IN THESE HEARINGS, OF THE DEPENDENCY CASES THAT YOU HAVE, AND I WOULD ASSUME THAT MOST OF THEM INVOLVE INDIGENT PARENTS?

YES. THE RIGHT TO COUNSEL APPLIES ONLY TO INDIGENT PARENTS. WELL, THE RIGHT TO APPOINTMENT OF COUNSEL.

BUT I WAS JUST TALKING ABOUT OVERALL THAT, THE GREAT MAJORITY OF THESE CASES INVOLVE INDIGENT PARENTS.

YES.

AND DO YOU HAVE ANY SENSE OF HOW MANY OF THOSE INDIGENT PARENTS ACTUALLY REQUEST COUNSEL?

THE VAST MAJORITY. I DON'T KNOW. I AM SURE IT IS 95-PLUS PERCENT.

ISN'T IT TRUE THAT WHENEVER CHILDREN ARE TAKEN TO SHELTERS, COUNSEL IS APPOINTED?

IF THE PARENT APPEARS, TYPICALLY, YES, SIR.

IF THE PARENT IS THERE, THE ATTORNEY IS APPOINTED.

FOR THE MOST PART.

WHEN WE GET BACK TO UNDERSTANDING WHAT HAPPENED HERE IS THAT, WHEN THE STATUTE WAS REWRITTEN, IT WAS DEEMED TO BE IN A BETTER WAY THAT, TO LET THE PARENT HAVE COUNSEL EARLY ON, RATHER THAN WAIT TO THE, IT WENT TO THE TERMINATION. THAT WAS A LEGISLATIVE DECISION TO --

CORRECT.

-- ALLOW FOR THE APPOINTMENT OF COUNSEL EARLY ON, TO IMPROVE THE EFFECTIVE ADMINISTRATION OF THESE CASES. SO FROM MY POINT OF VIEW, IT WOULD BE, INDEED, IRONIC, IF SOMETHING THAT WAS DONE TO REALLY MAKE THIS SYSTEM WORK BETTER FOR THE CHILD AND FOR THE PARENTS, WOULD SOMEHOW CAUSE SOME DELAY, BECAUSE THE IDEA WAS THAT THIS WAS SUPPOSED TO EXPEDITE IT.

EXACTLY RIGHT.

BUT BEING, I THINK WHAT YOU ARE HEARING IS FROM JUSTICE LEWIS AND JUSTICE WELLS, AND I AM GOING TO SORT OF CHIME IN HERE, IS THAT EVERY, THERE IS MONEY TO BE PAID TO LAWYERS IN EVERY TWENTY CIRCUITS. OKAY. EVERY CIRCUIT MAY HAVE A DIFFERENT METHOD, BUT IF WE HAVE, IN LAWYERS THAT GET PAID FAIRLY SMALL AMOUNT OF MONEY, AS I UNDERSTAND IT, A FEW HUNDRED DOLLARS FOR THESE CASES, WHAT IS IN PLACE OR SHOULD BE IN PLACE OR SHOULD THERE BE SOMETHING THAT IS IN PLACE, THAT, IF LAWYERS THAT ARE REALLY JUST KIND OF, YOU KNOW, THEY SHOW UP AND THEY JUST SORT OF, YOU KNOW, CONCEDE THEIR CLIENT'S CASE AND THEY DON'T DO ANYTHING, HOW DO WE, WHAT DO WE DO, IS THERE SOME OTHER WAY TO MONITOR THIS PROCESS, OTHER THAN BY CREATING AN ANSWER LATER PROCEEDING? -- AN ANSWER ILL AREA PROCEEDING? -- AN ANCILLARY PROCEEDING? OR IS THERE A PROBLEM?

THERE IS A HORRENDOUS PROBLEM WITH CREATING AN ANCIL L.A. ARY -- AN ANCILLARY PROCEEDING.

BUT THERE A PROBLEM IN PALM BEACH COUNTY, ACCORDING TO WHAT THE DEPARTMENT IS AWARE OF?

NO, AND LET ME CLARIFY THAT NOT ONLY THIS CASE COMING FROM PALM BEACH COUNTY, IT WILL CLEARLY HAVE A STATEWIDE IMPACT. THERE IS NO QUESTION ABOUT IT, AND LET ME GO FURTHER TO SAY THAT I WAS PRIVILEGED TO PARTICIPATE IN A MEETING, JUST UNDER A MONTH AGO, AT THE INVITATION, AS WAS MY CO-COUNSEL, AT THE INVITATION OF JUDGE WARREN, AT THE FOURTH DCA, WHO HAS BEEN CHARGED WITH THE RESPONSIBILITY OF ASSISTING AND, WITH A COMMITTEE, I GUESS SHE IS CHAIRING THE COMMITTEE, TO TRY TO INCREASE THE EFFICIENCY OF THE DISTRICT COURTS OF APPEAL, AND BASED ON JUDGE WARNER'S STATISTICS, SHE REPORTED TO THOSE OF US PARTICIPATING IN THAT MEETING THAT, THE AVERAGE NUMBER OF DAYS FROM THE TIME THAT A NOTICE OF APPEAL IS FILED IN A DEPENDENCY MATTER, RUNS FROM A LOW OF 263.49 DAYS, TO DISPOSITION, TO A HIGH OF 341.08 DAYS, AND I AM NOT GOING TO SORT OF THROW IN --

WHAT DOES THIS HAVE TO DO WITH THE QUESTION AS TO WHETHER, IF COUNSEL ARE NOT PERFORMING COMPETENTLY OR EFFECTIVELY AT THE DEPENDENCY STAGE, IS THERE A POSSIBLE, HAS THE DEPARTMENT THOUGHT OF ANY OTHER TYPE OF PROCEDURE, SHORT OF RECOGNIZING A CONSTITUTIONAL RIGHT TO ADDRESS WHAT MAY OR MAY NOT BE A STATEWIDE PROBLEM?

RIGHT.

AND I AM NOT, YOU KNOW, THE QUESTION OF HOW LONG APPEALS ARE TAKING, IS THAT IS A SEPARATE ISSUE. I MEAN, WE UNDERSTAND THIS COULD, YOU KNOW, BUT IF THERE WAS A CONSTITUTIONAL RIGHT, IT WOULDN'T MATTER IF THE APPEALS TOOK LONGER. BUT GOING BACK TO THE QUESTION OF WHAT JUSTICE WELLS STARTED WITH, WHAT IS, IS THERE ANYTHING YOU HAVE THOUGHT OF AND COME UP WITH ANY OTHER STATE TO ENSURE THAT THE PROCESS FOR THE PARENTS ARE MEANINGFUL, THROUGH THE ATTORNEYS THAT ARE BEING APPOINTED TO REPRESENT THEM?

THE ONLY THING THAT I CAN SUGGEST TO YOUR HONOR IS THIS, THAT THE PARENTS ARE APPOINTED COUNSEL. THE HEARINGS TAKE PLACE IN THE PUBLIC. THESE ARE DEPENDENCY HEARINGS. THERE ARE MANY, MANY, MANY, MANY PEOPLE IN THE COURTROOM. ALL OF THE LAWYERS PRESENT DO CONFER WITH ONE ANOTHER, FROM TIME TO TIME, THESE CONFLICT TEAMS AS WE CALL THEM IN PALM BEACH COUNTY, CONSIST OF THREE LAWYERS APIECE, BUT THERE ARE OTHER LAWYERS THAT FLOAT AROUND FROM COURTROOM TO COURTROOM, BECAUSE THERE ARE FOUR, WELL, TECHNICALLY FIVE COURT ROOMS THAT HANDLE THIS. FURTHERMORE, YOU HAVE FOUR JUDGES WHO ARE OVERSEEING THESE HEARINGS. ANY GIVEN JUDGE IS GOING TO BE OVERSEEING THE HEARINGS FROM THE BEGINNING OF THE CASE TO THE END OF THE CASE. THERE WAS A GUARDIAN AD LITEM APPOINTED FOR EACH CHILD. FOR THE MOST PART, EVERYBODY KNOWS WHAT IS GOING ON WITH EXCEPTION OF, OF COURSE, PRIVILEGED COMMUNICATION BETWEEN A PARENT AND THEIR LAWYER. IT DOES HAPPEN FROM TIME TO TIME, THAT LAWYERS, THAT PARENTS COME IN AND THEY SAY, YOU KNOW, I AM NOT GETTING ALONG WITH THIS LAWYER OR THIS LAWYER DOESN'T RETURN MY CALLS. THE JUDGES DO NOT HESITATE TO GRANT A MOTION FOR WITHDRAWAL FOR THAT LAWYER, AND APPOINTMENT OF ANOTHER LAWYER.

WHO ADMINISTERS THE COUNSEL'S APPOINTMENT IN PALM BEACH COUNTY? HOW IS THAT ADMINISTERED? BY THE --

THERE ARE INDIVIDUAL CONTRACTS.

IS THAT DONE BY THE COURT ADMINISTRATOR'S OFFICE?

I THINK THE CONTRACT IS LET OUT BY THE COURT ADMINISTRATOR'S OFFICE, BUT I AM AM NOT 100 PERCENT SURE OF THAT, JUSTICE.

OKAY.

I AM NOT QUICK TO USE THE PHRASE FLOODGATES OR OPENING THE FLOODGATES. BUT I FEEL AS IF I HAVE TO USE IT IN THIS SITUATION. IF THIS COURT RECOGNIZES A RIGHT, A CONSTITUTIONAL RIGHT TO COUNSEL IN THESE DEPENDENCY CASES, AND IF THIS COURT RECOGNIZES A RIGHT THAT INCLUDES EFFECTIVE COUNSEL, AND IF THIS COURT ACCEPTS THE SUGGESTION THAT THE MANNER IN WHICH TO DETERMINE WHETHER COUNSEL HAS BEEN EFFECTIVE IS TO UTILIZE STRICKLAND-TYPE PROCEEDINGS, WE ARE LOOKING AT A, IN ALL CANDOR, I HAVE TO TELL YOU WE ARE LOOKING AT A MONKEY WRENCH THAT IS GOING TO BE THROWN IN THE DEPENDENCY SYSTEM ACROSS THE STATE AND WILL GRIND IT TO A HALT. WILL GRIND IT TO A HALT. I CANNOT --

ARE MANY OF THE DEPENDENCY CASES THAT ARE NOW FILED, APPEALED? DO YOU HAVE ANY SENSE OF THE NUMBERS OF THOSE CASES THAT ARE APPEALED OR PERCENTAGES?

NO. ACTUALLY I HAD THOSE NUMBERS. I DIDN'T BRING THEM WITH ME. I GOT THEM FROM JUDGE WARNER, ACTUALLY. BECAUSE SHE HAD THEM FROM ALL OF THE COUNTIES. THE NUMBER OF

DEPENDENCY CASES THAT ARE APPEALED IS NOT QUITE AS HIGH AS YOU WOULD EXPECT, AS THE NUMBER OF TERMINATION OF PARENTAL RIGHTS, BUT THEY ARE SIGNIFICANT NUMBERS.

IN THIS CASE, SO YOU SAY THE CHILD IS, IS THE CHILD STILL IN A DEPENDENT STATUS?

NO. THE CHILDREN ARE WITH THEIR RESPECTIVE FATHERS AND THE DEPARTMENT OF SUPERVISION HAS BEEN TERMINATED OVER THOSE CHILDREN.

THAT IS AN ONGOING DISSOLUTION, SO AS TO THIS CASE THERE, IS NO ISSUE.

NO. NO. NO.

THANK YOU, COUNSEL.

IF THERE IS NOTHING FURTHER, THANK YOU VERY MUCH.

IN PALM BEACH COUNTY, WHEN YOU ARE APPOINTED, IS THAT AN APPOINTMENT THAT IS MADE BY THE SPECIFIC TRIAL JUDGE FOR THAT DEPENDENCY CASE, OR IS IT MADE BY THE COURT ADMINISTRATOR'S OFFICE?

IT IS DONE IN THE COURTROOM, AND THE -- I THINK THEY JUST HAVE A ROTATING LIST IN THE EACH DIVISION. YOU JUST GO TO THE NEXT PERSON ON THE LIST AND THERE IS JUST A HANDFUL OF LAWYERS THAT HAVE CONTRACTS THAT HANDLE THEM.

RIGHT. OKAY.

IS THERE A SYSTEM, I MEAN, AND HOW DID THE LAWYERS GET ON THAT LIST?

IS IT SOMETHING --

IT IS A, I BELIEVE I AM CORRECT ON THIS, THAT IT IS A PROCESS WHERE YOU PUT IN AN APPLICATION, AND YOU, AND A COMMITTEE PICKS THE ONES THAT RECEIVE THE CONTRACT.

THE COMMITTEE OF?

IT IS LIKE COUNTY ATTORNEY. I AM NOT SURE IF A JUDGE IS ON THE COMMITTEE OR NOT.

WOULD YOU AGREE THAT, IN PALM BEACH, WHAT WOULD HAPPEN IF THERE WAS AN ATTORNEY IN PALM BEACH COUNTY, FOR EXAMPLE, THAT REALLY WAS JUST TAKING THE MONEY AND DOING NOTHING? IS THERE ANYTHING IN PLACE, SHORT OF THIS RIGHT, THAT IS A SUPERVISORY TYPE OF CIRCUMSTANCE, TO ENSURE THAT LAWYERS SUCH ASSURE SELF AND YOU KNOW, HIGHLY-QUALIFIED LAWYERS ARE THE ONES THAT ARE ASSIGNED TO THESE CASES?

OTHER THAN THE FLORIDA BAR, PROBABLY NOT.

DO YOU KNOW HOW LAWYERS ARE APPOINTED TO HANDLE DEPENDENCY CASES IN OKEECHOBEE COUNTY?

I DO NOT. I DO NOT.

OKAY.

I AM NOT FAMILIAR ENOUGH. THE PROCEDURE, THOUGH, THIS THEORY THAT A RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL IN TERMS OF THE PROCEDURE BOGGING DOWN THE SYSTEM, QUESTION THAT. FIRST OF ALL, YOU KNOW, A LOT OF DEPENDENCY CASES ARE JUST THAT, LIKE JUSTICE WELLS SUGGESTED, YOU KNOW, THEY ARE RESOLVED. THERE IS CONSENTS. THE PARENTS

ENGAGE IN CASE PLANS AND IMMEDIATELY START WORKING ON WHATEVER DRUG REHABILITATION AND ALL OF THAT THAT THEY NEED TO DO, SO YOU DON'T NECESSARILY HAVE A CONTESTED TRIAL.

BUT YOU COULD HAVE HAD A SITUATION HERE, LET'S JUST ASSUME THAT THIS, THIS PERSON, YOUR CLIENT WAS RECALCITRANT AND WANTED TO JUST GUM UP THE WORKS. THIS IS EFFECTIVELY WHAT CAN HAPPEN, IF SOMEBODY IS ACTUALLY WHERE, BECAUSE IT IS NOT THE LAWYER SAYING. IT IS THE CLIENT THAT IS SAYING IT. IT IS NOT EVEN WHETHER IT IS IN GOOD FAITH OR NOT.

WELL, IF, YES, IT IS MUCH SIMPLER TO RESOLVE THESE PETITIONS AT THE OUTSET. A PETITION WOULD BE EASY TO RESOLVE AT THE OUTSET, BECAUSE THE TRIAL JUDGE IS, BOTH, THE TRIER OF FACT, AND IT MAKES IT SO MUCH EASIER, YOU KNOW --

WHY WOULDN'T IT BE A GOOD IDEA, THEN, IF SHE COULD HAVE COMPLAINED, ANY TIME UP TO THE ADJUDICATION, TO SAY MY LAWYER IS NOT DOING ANYTHING FOR ME? WHY SHOULDN'T IT HAVE TO BE, AND THEN IT IS RESOLVED THEN AND THERE. JUST YOU KNOW, YOU ARE OFF THE CASE, OR YOU KNOW, THERE IS A, IT IS ALMOST LIKE, WHAT IS IT, YOU KNOW, IN THIS CRIMINAL CONTEXT, YOU KNOW, NELSON OR, A NELSON HEARING, WHERE YOU ARE SAYING YOU COMPLAIN OF YOUR LAWYER IS NOT DOING A GOOD JOB, AND THEN THE JUDGE IS ABLE TO MAKE THAT INQUIRY, THAN IS THE END OF THE -- END OF T.

EFFECTIVELY THAT WOULD -- OF IT.

EFFECTIVELY THAT WOULD CREATE A CONFLICT OF INTEREST BETWEEN THE CLIENT AND THE LAWYER, BECAUSE YOU ARE IN A POSITION WHERE THE CLIENT WOULD BE ASKED TO COMPLAIN ABOUT THE LAWYER AND POSSIBLY DISCLOSE PRIVILEGED INFORMATION, TO SAY THAT MY LAWYER IS NOT PURSUING THIS WITNESS. THAT COULD EFFECTIVELY HURT THE PERSON.

IS TERMINATION THE END GOAL IN THIS CASE?

IT DIDN'T TURN OUT TO BE THE END GOAL. WHETHER IT WOULD HAVE OR NOT, I SUBMIT, IS UNPREDICTABLE.

ISN'T IT TRUE THAT, IN MOST OF THESE CASES WHEN YOU GET THE GUARDIAN AD LITEM APPOINTED, THEY ARE GOING TO TALK TO THE PARENTS AND SAY ARE THERE ANY WITNESSES THAT WILL HELP YOUR CASE AND ARE THERE AUNTS, UNCLES, OR ANYBODY ELSE THAT SAW OR DIDN'T SEE WHAT WAS GOING ON, AND THEY ARE DOING THAT TO BOTH SIDES, AND THEY ARE TALKING TO POLICE OFFICERS, SO IN ADDITION TO AN ATTORNEY GOING OUT AND HUNTING DOWN WITNESSES, YOU HAVE GUARDIAN AD LITEMS THAT ARE EFFECTIVELY DOING THE SAME THING?

WELL, THE GUARDIANS' ROLE, I WOULD SUGGEST, IS --

IT IS A DIFFERENT ROLE. THEY ARE THERE FOR THE CHILD, BUT THE REALITY IS THAT THEY ARE GOING OUT, IN ADDITION TO ATTORNEYS FOR BOTH SIDES, LAW ENFORCEMENT IN SOME CASES, GOING OUT, AND TRYING TO, AS A DIFFERENT ARM OF PROTECTION FOR THE WHOLE INTEGRITY OF THE PROCESS, TRYING TO FIGURE OUT WHAT IS GOING ON AND WHAT IS IN THE BEST INTEREST OF THE CHILD.

I WOULD SUGGEST THAT THE, THAT PARENTS THAT ARE IN, THAT ARE ACCUSED IN THESE PETITIONS, ARE OFTEN VERY PARANOID OF THE GUARDIANS AND THE GUARDIANS' ROLE, BECAUSE THE GUARDIANS, YOU KNOW, IF THEY READ THE PETITION AND THE COMPLAINT AND THEY FEEL THAT THE, THAT THIS APPEARS TO BE A CASE THAT WARRANTS DEPENDENCY, THE PARENTS ARE GOING TO FEEL VERY MUCH THAT THEY ARE BEING, ALSO, PROSECUTED BY THE

GUARDIAN.

BUT ISN'T THE TENDENCY TO GIVE, JUST AS WE HEAR IN THESE INEFFECTIVE ASSISTANCE OF COUNSEL CASE, I HAVE THIS WITNESS OVER HERE WHO IS MY STAR WITNESS THAT THEY DIDN'T TALK TO SAY, ISN'T THAT THE SAME PERSON THAT THE PARENT IN THAT CIRCUMSTANCE WILL SAY THIS PERSON WILL GET ME OFF THE HOOK? BECAUSE THAT IS BASICALLY WHY THEY ARE SAYING INEFFECTIVE ASSISTANCE OF COUNSEL. IF THEY WOULD HAVE CALLED MY ACE WITNESS, THEN THE OUTCOME WOULD HAVE BEEN DIFFERENT. THAT IS THE EXACT SAME WITNESS THAT THE PARENT HAS EVERY MOTIVATION TO SAY, BOY, THIS IS MY ACE, AND TELL THE GUARDIAN THAT. I MEAN THAT, IS MY EXPERIENCE FROM READING THOSE GUARDIAN REPORTS.

MY RED LIGHT IS ON. DO YOU WANT ME TO ANSWER?

PLEASE. YOU MAY ANSWER THE QUESTION.

THE PARENTS ARE JUST TYPICALLY NOT THAT SOPHISTICATED. THEY, MAYBE THAT IS ONE OF THE REASONS THAT THEY ARE THERE. THEY SOMETIMES NEED GUIDANCE OF COUNSEL, TO EVEN POINT OUT WHAT NEEDS TO BE PULLED, WHAT RECORDS NEED TO BE FOUND OR WHAT WITNESSES NEED TO BE LOCATED. YOU KNOW, I WISH I COULD SAY THAT THESE, THAT FOLKS IN THIS SYSTEM ARE ALWAYS GOING TO BE THAT MOTIVATED, THAT INTELLIGENT, THAT ARTICULATE TO FIGURE THIS OUT, WITHOUT THE LAWYER KIND OF GRILLING THEM, AND BASICALLY, YOU KNOW, LEADING THEM, YOU KNOW, WITH A LEASH, TO TELL THEM WHAT THEY NEED TO DO.

THANK YOU, COUNSEL, AND THE COURT IS VERY APPRECIATIVE OF ALL COUNSELS' EFFORTS ON BEHALF OF THESE CHILDREN, BECAUSE WE KNOW THIS IS A VERY SERIOUS MATTER THAT CONFRONTS THE COURTS AND THE FAMILIES OF FLORIDA, SO THANK YOU VERY MUCH. THE COURT WILL BE IN RECESS.

MARSHAL: PLEASE RISE.